IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 28TH MARCH 2007 / 7TH CHAITHRA 1929

Crl.MC.No. 548 of 2007()

AGAINST THE ORDER DATED 28/04/2006 IN CMP.1325/06 IN CC.166/2004 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, PERINTHALMANNA

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PETITIONER: ACCUSED

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1. BIJEEV @ KUTTAN, S/O VELU,
   POOLAKKAL, KARIAVATTOM,
   PERINTHALMANNA, MALAPPURAM DISTRICT.

2. KODUVAYAKKAL DINESAN @ THAMBI,
   S/O KUNHAN, KARIAVATTOM,
   PERINTHALMANNA, MALAPPURAM DISTRICT.

3. POOLAKKAL SUNIL BABU @ BABUKUTTAN,
   S/O VELAYUDHAN, KARIAVATTOM,
   PERINTHALMANNA, MALAPPURAM DISTRICT.

4. KOZHIPARAMBAN MUHAMMED SHAFI,
   S/O MOIDU, KARIAVATTOM,
   PERINTHALMANNA, MALAPPURAM DISTRICT.

5. KOZHIPARAMBAN RASHEED, S/O SAIDU,
   KARIAVATTOM, PERINTHALMANNA,
   MALAPPURAM DISTRICT.

6. KODUVAYAKKAL MELETHIL SAKEER HUSSAIN @
   SAKEER, S/O MOOSA, KARIAVATTOM,
   PERINTHALMANNA, MALAPPURAM DISTRICT.

7. POOLAKKAL RAJEEV, S/O VELU,
   KARIAVATTOM, PERINTHALMANNA,
   MALAPPURAM DISTRICT.

8. ALLUR SHAJI, S/O MUHAMMED,
   KARIAVATTOM, PERINTHALMANNA,
   MALAPPURAM DISTRICT.

9. KODUVAYAKKAL SASIDHARAN @ PAPPU,
   S/O AYYAPPAN, KARIAVATTOM,
   PERINTHALMANNA, MALAPPURAM DISTRICT.

10. KODUVAYAKKAL MOHANAN, S/O UNNAMAN,
KARIAVATTOM, PERINTHALMANNA,
MALAPPURAM DISTRICT.

11. KODUVAYAKKAL SUBRAMANIAN @ APPU,
S/O NADI, KARIAVATTOM,
PERINTHALMANNA, MALAPPURAM DISTRICT.

12. KODUVAYAKKAL SUBRAMANIAN @ KODU,
S/O PERIYAPPAN, KARIAVATTOM,
PERINTHALMANNA, MALAPPURAM DISTRICT.

13. THALLACHIRA YOONUS, S/O MOIDEEN,
KARIAVATTOM, PERINTHALMANNA,
MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS: STATE:-

THE STATE OF KERALA, REPRESENTED BY
THE SUB INSPECTOR OF POLICE,
MELATTOOR POLICE STATION - THROUGH
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-31.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 28/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 548 of 2007

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Dated this the 28th day of March, 2007

O R D E R

The petitioners are accused in a prosecution for offences punishable, inter alia, under Sections 353 and 427 r/w. 149 I.P.C. The alleged incident took place on 5.2.2004. The case of the prosecution is that consequent to some disputes regarding umpiring of a football match there were frayed tempers and two groups were fighting each other. At that stage a police party, on receipt of information, had reached the scene. The miscreants allegedly turned against the police. They caused interference and disturbance to the due discharge of official duty of the policemen. The police jeep also allegedly suffered damage to the tune of Rs.500/-

2. The trial had commenced. No independent witnesses appear to have offered their support to the prosecution case. The learned Prosecutor at that stage filed an application under Section 321 Cr.P.C. to convey to the court that in his assessment and in the interests of justice the prosecution deserves to be withdrawn. Requisite 'no objection' endorsement was received from the

Government also for such withdrawal. It is thereafter that the learned Prosecutor chose to make the request to withdraw from the prosecution.

3. The learned Magistrate, by the impugned order, rejected the prayer for grant of leave to the prosecution to withdraw from the prosecution. The learned Magistrate appears to have felt that the conclusion of the Prosecutor that there is no satisfactory evidence is not acceptable in as much as the official witnesses had supported the prosecution version.

4. Precedents galore on the role of the Court while exercising its jurisdiction under Section 321 Cr.P.C., where prosecution seeks leave to withdraw from the prosecution. Withdrawal from prosecution is the exercise of executive discretion vested in the Prosecutor and the Court cannot and does not have jurisdiction to sit in appeal over such decision. The Prosecutor is expected to take the decision for withdrawal as a minister of justice and the court is granted the discretion to grant leave considering all circumstances. The decision of the Prosecutor is not subject to any appellate consideration by the court.

5. The short question is whether the discretion has been exercised properly. In the instant case, the nature of facts and circumstances alleged

by the prosecution, the nature of the damage suffered by the vehicle, the fact that there is no allegation that any police official had suffered any injury and the fact that no independent witness is choosing to support the prosecution are all relevant circumstances which can and ought to be taken into consideration by the Prosecutor while exercising his executive discretion. I am satisfied from the totality of facts available in this case that there was no necessity for the court to interfere with such discretion exercised by the learned Prosecutor.

6. This Crl.M.C. is accordingly allowed. The impugned order is set aside. The prayer for withdrawal is accepted and the proceedings against the petitioners/accused in C.C.No.166 of 2004 shall stand terminated.

(R. BASANT)
Judge

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